NO. 47066-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

ISAIAH W. NEWTON, JR.,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

BRIEF OF RESPONDENT

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I. INTRODUCTION

Isaiah Newton was convicted of first degree burglary and resisting arrest by unanimous jury verdict. He appealed both convictions. Division Three of this Court then reversed the burglary conviction and affirmed the resisting arrest conviction. *State v. Newton,* 180 Wn. App. 1037, 2014 WL 1607389. The burglary was reversed on sufficiency of the evidence grounds. Relying upon this decision, Newton filed a claim for monetary damages and other relief pursuant to RCW 4.100, the recently passed Wrongful Conviction Compensation Act (WCCA).

However, Newton's claim is not appropriate for WCCA relief because a successful WCCA claim is required to be founded upon "significant new exculpatory information." RCW 4.100.040(c)(ii). A judicial decision which was simply a review of the evidence before Newton's jury does not amount to "new information" as contemplated by RCW 4.100. Thus, the trial court properly dismissed Newton's WCCA claim as a matter of law.

In addition, in order to bring a successful WCCA claim, a person must be "actually innocent," meaning "he or she did not engage in any illegal conduct alleged in the charging documents. RCW 4.100.040(2)(a). It is undisputed that Newton entered into and remained unlawfully within a residence – one of the elements of first degree burglary. Thus, Newton

did engage in some of the illegal conduct alleged in the charging documents and his WCCA claim necessarily fails.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Is reversal of a jury verdict of guilty due to an appellate court finding of insufficient evidence "significant new exculpatory information" that can form the basis of a wrongful conviction claim pursuant to RCW 4.100?

B. Should a wrongful conviction claim be dismissed where it is undisputed that the claimant engaged in some of the illegal conduct alleged in the charging documents from the underlying criminal case?

III. STATEMENT OF THE CASE

A. Adoption of RCW 4.100

The legislature adopted the WCCA in 2013 "to provide an avenue for those who have been wrongly convicted in Washington state to redress the lost years of their lives, and help to address the unique challenges faced by the wrongly convicted after exoneration." RCW 4.100.010. A successful claimant can recover monetary damages, reimbursement of accrued child support arrearages, college tuition credits, attorney's fees, and other awards. RCW 4.100.060(5). (Chapter attached as *Appendix A*).

However, not all overturned convictions will lead to WCCA claims. Rather, the Legislature narrowed the field by requiring that a claim based on reversal of a conviction must be based on significant new exculpatory information. RCW 4.100.040(1). A claimant must also show

that he or she "did not engage in any illegal conduct alleged in the charging documents." RCW 4.100.040(2)(a).

B. Facts

For purposes of this motion, the State assumes the facts as set forth by the Court of Appeals in its April 22, 2014 Opinion reversing Mr. Newton's burglary conviction.[1] Mr. Newton was charged with first degree burglary and resisting arrest after entering his disabled mother's home while on drugs, and physically attempting to get her to walk. Newton Op. at 1. Newton's mother fell when he tried to get her to walk, and Newton resisted Tacoma police who responded to the scene. *Id.*

Specifically, beginning at 12:51 a.m. on May 18, 2012, Newton called his mother three times. In the first and second phone calls, he said he wanted to visit her and she told him not to come over until morning. *Id.* In the third phone call, "[h]e was talking crazy," saying he wanted to share with her that he spoke with God, who told him she could walk. *Id.* He told her he was under the influence of a controlled substance that the State later argued was the hallucinogen phencyclidine, commonly known as PCP. *Id.* She again told him not to come over until morning. Soon, Mr. Newton

[1] Newton's conviction for resisting arrest was affirmed. The Court's Opinion is Exhibit C to Newton's Complaint for Wrongful Incarceration, previously filed herein. CP 23-33. For the Court's convenience, it is also attached to this response as *Appendix B.*

began pounding on the front door and ringing the doorbell to Ms. Cooper's duplex unit while yelling "mama!" *Id.*

Newton then went to his mother's bedroom window, which was closed but not completely secure. He said in a "drunken" voice that "[h]e wanted [her] to open the window because . . . God and he had been talking and . . . [she] could walk again." She initially refused to open the window for him. *Id.*

Conflicting evidence concerning whether Newton had permission to come through the window was presented at trial. *Id* at 1-2. Newton's mother testified that she refused to open the window for her son solely because she was in bed and could not reach it. *Id.* at 1. She stated, "I let him know to open the window if he wanted to come in because I couldn't get out of bed to do that." *Id.* She later reiterated how she told him "he could come in through my bedroom window . . . [i]f he could open it," and elaborated, "I had more or less invited him in to stop him from being out there, and being loud and bothering people, waking people. *Id.* It was early in the morning." Newton's mother stated the above was what she initially told police, but police testimony contradicted her assertion. *Id.*

Once inside the window, Newton told his mother she could walk. *Id.* at 2. She asked him to help her to the restroom by following normal procedures. But "[h]e was convinced that [she] could walk." *Id.* Insistent

and while repeating God said she could walk, Newton placed his arms around his mother and tried lifting her to her feet so she could walk. After a few attempts, they both fell to the ground. *Id.* During the incident, her nightgown accidentally tore, her drinking glass shattered, and her television and some trinkets were knocked over. *Id.* Newton's mother yelled for help. *Id.* Newton repeatedly tried lifting her but was unsuccessful. *Id.* Agitated and wanting to get his attention, she claimed she hit and kicked him while telling him to stop and get help. *Id.* Newton did not listen, but did help his mother to a feeble standing position, clinging to the doorframe. *Id.* Afraid of falling again, Newton's mother asked Newton to help her maneuver into her wheelchair. *Id.* He did not comply with her request, instead standing still and insisting, "Mama, you can walk, God told me you can walk." *Id.*

Housemate Kathie Cooper responded to the screaming and saw Newton's mother clinging to the wall. *Id.* Ms. Cooper returned to her bedroom and called 911 emergency response, staying in her bedroom during the entire phone call because she was afraid of Newton's unstable behavior. *Id.* Neighbor David Price saw Newton run to the front door and bang and kick it while hollering for Ms. Williams to open it. Mr. Price soon heard a crash and Ms. Williams screaming to Newton, "Stop, let me go." *Id.* At the window, Mr. Price saw Newton "wrestling" with

Ms. Williams, "trying to make her stand on her feet." Because of her disability, his efforts had the result of "picking her up and dropping her, picking her up and dropping her." *Id.* While doing so, Newton was telling his mother to walk, yelling loudly, "By the blood of Jesus you can walk, mama." *Id.* Mr. Price testified, "He was having some kind of episode, or he wasn't really with it." *Id.* All the while, Newton's mother was screaming, "Let me go. . . . Stop. Stop. You're hurting me. You're hurting me." *Id.* Neighbor Frank Givens joined Mr. Price at the scene. He saw and heard much the same as Mr. Price, and dialed 911.

Police arrived and twice ordered Mr. Newton to release his mother but, given his mental state, he did not comply. *Id.* Officer Robert Hannity deployed an electroshock weapon against him and, after a struggle, soon handcuffed him with the help of other police officers. *Id.* Throughout this encounter, Newton was screaming, "Mom, mom, you don't need you [sic] wheelchair. *Id.* You don't need your chair. You don't need it anymore. You don't need your wheelchair, mom." *Id.*

C. Procedural History

The Court of Appeals reversed Newton's first degree burglary conviction was reversed for insufficient evidence of intent. The trial court then entered an agreed order dismissing the burglary charge. Newton subsequently filed a wrongful conviction claim. CP 1-39. The State moved

to dismiss Newton's claim because he cannot establish "actual innocence" and cannot show that his criminal conviction was overturned on the basis of "significant new exculpatory information." CP 93-143; RCW 4.100.040(1)(c); RCW 4.100.020(2)(a). Moreover, he cannot show that he did not engage in *any* illegal conduct alleged in the charging documents. The trial court agreed and dismissed Newton's claim via summary judgment. CP 203-205. Newton appeals.

IV. ARGUMENT

In order to file an actionable WCCA claim for compensation, the claimant must, in part, "establish by documentary evidence" that:

> (i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies that are the basis for the claim; or
>
> (ii) The claimant's judgment of conviction was reversed or vacated and the charging document dismissed **on the basis of significant new exculpatory information** or, if a new trial was ordered pursuant to the presentation of significant new exculpatory information, either the claimant was found not guilty at the new trial or the claimant was not retried and the charging document dismissed;

RCW 4.100.040(1)(c) (emphasis added).

Here, the plaintiff was not pardoned so he must establish by documentary evidence that his conviction was overturned "on the basis of significant new exculpatory information."

In addition, a claimant must also establish "actual innocence," which is defined as proof that the claimant "did not engage in any illegal conduct alleged in the charging document." RCW 4.100.020(2)(a).

A. Newton's WCCA Claim Was Properly Dismissed Because He Is Not "Actually Innocent" of Burglary in the First Degree

A person is "'[w]rongly convicted' if he or she was charged, convicted, and imprisoned for one or more felonies of which he or she is actually innocent." RCW 4.100.020(2)(b). In turn, a person is "'[a]ctually innocent' of a felony if he or she did not engage in any illegal conduct alleged in the charging documents." RCW 4.100.020(2)(a). To obtain judgment in his or her favor, the claimant must prove actual innocence by clear and convincing evidence. RCW 4.100.060(1)(d).

Because the WCCA was passed in June 2013 there is no appellate law yet interpreting the statute's "actual innocence" definition. However, federal courts provide guidance in addressing the concept of "actual innocence" because the federal courts address freestanding claims of actual innocence raised in habeas corpus petitions.

The Ninth Circuit, while addressing a case in which it reversed a district court's judgment granting a habeas corpus petition based on a freestanding claim of actual innocence, recently took the opportunity to flesh out how courts should evaluate actual innocence claims. The Court emphasized that a plaintiff who claims he is actually innocent has an

"extraordinarily high" affirmative duty to prove his actual innocence. *Jones v. Taylor*, 763 F.3d 1242, 1246, 14 Cal. Daily Op. (9th Cir. 2014).

Federal courts interpreting the term "actual innocence" have repeatedly held that evidence which merely casts doubt on a person's guilt is insufficient to establish actual innocence. *See House v. Bell,* 547 U.S. 518, 555, 126 S. Ct. 2064, 165 L. Ed. 2d 1 (2006) (rejecting freestanding actual innocence claim even though petitioner had "cast considerable doubt on his guilt"); *Jackson v. Calderon*, 211 F.3d 1148, 1165 (9th Cir. 2000) (rejecting freestanding actual innocence claim where petitioner's new evidence "certainly cast doubt on his conviction"); *Carriger v. Stewart,* 132 F.3d 464, 477 (9th Cir. 1997) (rejecting freestanding actual innocence claim where post-conviction evidence "serve[d] only to undercut the evidence presented at trial, not affirmatively to prove [petitioner's] innocence").

Here, as charged in Newton's case, the crime of Burglary in the First Degree consists of four elements:

> (1) That on or about the 18th day of May 2012, [Newton] entered or remained unlawfully in a building;
>
> (2) That the entering or remaining was with intent to commit a crime against a person or property therein;
>
> (3) That in so entering or while in the building or in immediate flight from the building [Newton] assaulted a person; and

(4) That any of these acts occurred in the State of Washington.

CP 128.

Although the Court of Appeals overturned Newton's conviction due to insufficient evidence, that holding was limited to element #2 – entering or remaining with intent to commit a crime therein. The court specifically noted that there was sufficient evidence of element #1, stating,

> While ***a rational jury could, viewing the evidence in the light most favorable to the State, find he entered or remained unlawfully in [the alleged victim's] bedroom beyond a reasonable doubt***, no evidence shows his intent was anything other than to show her she could walk.

Newton Opinion at 8 (emphasis added).

In addition, the Court noted the evidence of Newton's "belligerence" and "eventual assaultive touching and property damage." The presence of such evidence suggests that element #3 was also proven at trial. Regardless, because it is undisputed that sufficient evidence was presented at trial to establish that Newton did indeed commit the illegal conduct of entering or remaining unlawfully in a building, he cannot establish actual innocence for purposes of his WCCA claim. Thus, his claim was properly dismissed.

B. Newton's Complaint Was Properly Dismissed Because He Failed To Establish That His Conviction Was Overturned Due To "New" Information

Newton argues that the Division Three's decision in his criminal case is itself "new information" for purposes of this WCCA Claim. However, to have an actionable WCCA claim, the statute actually requires that the Court of Appeals must have based its decision to reverse on new information. Specifically, Newton must show his conviction "was ***reversed*** or vacated and the charging document dismissed ***on the basis of new exculpatory information***." RCW 4.100.040(1)(c)(ii) (emphasis added).

"If [statutory] language is unambiguous, we give effect to that language and that language alone because we presume the legislature says what it means and means what it says." *State v. Costich*, 152 Wn.2d 463, 470, 98 P.3d 795, 798 (2004) (citing *State v. Radan*, 143 Wn.2d 323, 330, 21 P.3d 255 (2001)).

Within the WCCA, the legislature unambiguously requires a WCCA claimant to show a post-conviction change in circumstance in order to plead an actionable claim. RCW 4.100.040(1)(c)(ii). If such a requirement was not imposed, every person who successfully had a conviction overturned through a Personal Restraint Petition would be

entitled to WCCA compensation. Obviously, such was not the intent of the legislature.

There is no supporting authority for Newton's assertion that the appellate opinion, itself, fulfills the new information requirement. Rather, reversal for insufficient evidence has been deemed inadequate to support a wrongful conviction claim in other states addressing the issue. *See, e.g., Piccarreto v. State*, 144 A.D.2d 920, 921, 534 N.Y.S.2d 31, 32 (1988) ("[I]nability of the People to meet their burden in a criminal trial is not the equivalent of the statutory requirement that claimants, who have the burden of proof on this claim, state facts in sufficient detail to permit the court to find that they are likely to succeed at trial in proving that they did not commit the acts charged in the accusatory instrument."); *State v. Dohlman*, 725 N.W.2d 428, 432-33 (Iowa 2006) ("The only law of the case found by the court of appeals is its legal finding that when it viewed the evidence in the light most favorable to the State, there was insufficient evidence to support a finding that Dohlman was guilty beyond a reasonable doubt. We disagree the reversal of Dohlman's convictions by the court of appeals proves his [wrongful conviction] claim.). Likewise, Newton's claim also fails.

Here, no new information was before the Court of Appeals. The record was limited to the events of the trial court proceeding, and even

the sufficiency of evidence argument had already been made to both the trial judge and Newton's jury. The Court's reversal was based on facts, information and argument that were available and utilized during Newton's trial. As such, his case is not appropriate for WCCA relief, and it should be dismissed.

Here, no new information was presented or argued during the Newton's criminal appellate proceeding. It was a direct appeal from a jury verdict and, as such, the information considered was the record on review from the trial court as constrained by RAP 9.1. The Division Three's reversal was based solely on facts, information and argument that were available and utilized during Newton's trial.

V. CONCLUSION

Mr. Newton has not (and cannot) allege any set of facts that justifies recovery under the WCCA. Accordingly, this Court should affirm the dismissal of his Complaint.

RESPECTFULLY SUBMITTED this 29th day of July, 2015..

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APPENDIX A

Chapter 4.100 RCW
WRONGLY CONVICTED PERSONS

RCW Sections

4.100.010
Intent.

The legislature recognizes that persons convicted and imprisoned for crimes they did not commit have been uniquely victimized. Having suffered tremendous injustice by being stripped of their lives and liberty, they are forced to endure imprisonment and are later stigmatized as felons. A majority of those wrongly convicted in Washington state have no remedy available under the law for the destruction of their personal lives resulting from errors in our criminal justice system. The legislature intends to provide an avenue for those who have been wrongly convicted in Washington state to redress the lost years of their lives, and help to address the unique challenges faced by the wrongly convicted after exoneration.

[2013 c 175 § 1.]

4.100.020
Claim for compensation — Definitions.

(1) Any person convicted in superior court and subsequently imprisoned for one or more felonies of which he or she is actually innocent may file a claim for compensation against the state.

(2) For purposes of this chapter, a person is:

(a) "Actually innocent" of a felony if he or she did not engage in any illegal conduct alleged in the charging documents; and

(b) "Wrongly convicted" if he or she was charged, convicted, and imprisoned for one or more felonies of which he or she is actually innocent.

(3)(a) If the person entitled to file a claim under subsection (1) of this section is incapacitated and incapable of filing the claim, or if he or she is a minor, or is a nonresident of the state, the claim may be

filed on behalf of the claimant by an authorized agent.

(b) A claim filed under this chapter survives to the personal representative of the claimant as provided in RCW 4.20.046.

[2013 c 175 § 2.]

4.100.030
Procedure for filing of claims.

(1) All claims under this chapter must be filed in superior court. The venue for such actions is governed by RCW 4.12.020.

(2) Service of the summons and complaint is governed by RCW 4.28.080.

[2013 c 175 § 3.]

4.100.040
Claims — Evidence, determinations required — Dismissal of claim.

(1) In order to file an actionable claim for compensation under this chapter, the claimant must establish by documentary evidence that:

(a) The claimant has been convicted of one or more felonies in superior court and subsequently sentenced to a term of imprisonment, and has served all or part of the sentence;

(b)(i) The claimant is not currently incarcerated for any offense; and

(ii) During the period of confinement for which the claimant is seeking compensation, the claimant was not serving a term of imprisonment or a concurrent sentence for any crime other than the felony or felonies that are the basis for the claim;

(c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies that are the basis for the claim; or

(ii) The claimant's judgment of conviction was reversed or vacated and the charging document dismissed on the basis of significant new exculpatory information or, if a new trial was ordered pursuant to the presentation of significant new exculpatory information, either the claimant was found not guilty at the new trial or the claimant was not retried and the charging document dismissed; and

(d) The claim is not time barred by RCW 4.100.090.

(2) In addition to the requirements in subsection (1) of this section, the claimant must state facts in sufficient detail for the finder of fact to determine that:

(a) The claimant did not engage in any illegal conduct alleged in the charging documents; and

(b) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about the

conviction. A guilty plea to a crime the claimant did not commit, or a confession that is later determined by a court to be false, does not automatically constitute perjury or fabricated evidence under this subsection.

(3) Convictions vacated, overturned, or subject to resentencing pursuant to *In re: Personal Detention of Andress*, 147 Wn.2d 602 (2002) may not serve as the basis for a claim under this chapter unless the claimant otherwise satisfies the qualifying criteria set forth in RCW 4.100.020 and this section.

(4) The claimant must verify the claim unless he or she is incapacitated, in which case the personal representative or agent filing on behalf of the claimant must verify the claim.

(5) If the attorney general concedes that the claimant was wrongly convicted, the court must award compensation as provided in RCW 4.100.060.

(6)(a) If the attorney general does not concede that the claimant was wrongly convicted and the court finds after reading the claim that the claimant does not meet the filing criteria set forth in this section, it may dismiss the claim, either on its own motion or on the motion of the attorney general.

(b) If the court dismisses the claim, the court must set forth the reasons for its decision in written findings of fact and conclusions of law.

[2013 c 175 § 4.]

4.100.050
Appeals.

Any party is entitled to the rights of appeal afforded parties in a civil action following a decision on such motions. In the case of dismissal of a claim, review of the superior court action is de novo.

[2013 c 175 § 5.]

4.100.060
Compensation awards — Amounts — Proof required — Reentry services.

(1) In order to obtain a judgment in his or her favor, the claimant must show by clear and convincing evidence that:

(a) The claimant was convicted of one or more felonies in superior court and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;

(b)(i) The claimant is not currently incarcerated for any offense; and

(ii) During the period of confinement for which the claimant is seeking compensation, the claimant was not serving a term of imprisonment or a concurrent sentence for any conviction other than those that are the basis for the claim;

(c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies that are the basis for the claim; or

(ii) The claimant's judgment of conviction was reversed or vacated and the charging document dismissed on the basis of significant new exculpatory information or, if a new trial was ordered pursuant to the presentation of significant new exculpatory information, either the claimant was found not guilty at the new trial or the claimant was not retried and the charging document dismissed;

(d) The claimant did not engage in any illegal conduct alleged in the charging documents; and

(e) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about his or her conviction. A guilty plea to a crime the claimant did not commit, or a confession that is later determined by a court to be false, does not automatically constitute perjury or fabricated evidence under this subsection.

(2) Any pardon or proclamation issued to the claimant must be certified by the officer having lawful custody of the pardon or proclamation, and be affixed with the seal of the office of the governor, or with the official certificate of such officer before it may be offered as evidence.

(3) In exercising its discretion regarding the weight and admissibility of evidence, the court must give due consideration to difficulties of proof caused by the passage of time or by release of evidence pursuant to a plea, the death or unavailability of witnesses, the destruction of evidence, or other factors not caused by the parties.

(4) The claimant may not be compensated for any period of time in which he or she was serving a term of imprisonment or a concurrent sentence for any conviction other than the felony or felonies that are the basis for the claim.

(5) If the jury or, in the case where the right to a jury is waived, the court finds by clear and convincing evidence that the claimant was wrongly convicted, the court must order the state to pay the actually innocent claimant the following compensation award, as adjusted for partial years served and to account for inflation from July 28, 2013:

(a) Fifty thousand dollars for each year of actual confinement including time spent awaiting trial and an additional fifty thousand dollars for each year served under a sentence of death pursuant to chapter 10.95 RCW;

(b) Twenty-five thousand dollars for each year served on parole, community custody, or as a registered sex offender pursuant only to the felony or felonies which are grounds for the claim;

(c) Compensation for child support payments owed by the claimant that became due and interest on child support arrearages that accrued while the claimant was in custody on the felony or felonies that are grounds for the compensation claim. The funds must be paid on the claimant's behalf in a lump sum payment to the department of social and health services for disbursement under Title 26 RCW;

(d) Reimbursement for all restitution, assessments, fees, court costs, and all other sums paid by the claimant as required by pretrial orders and the judgment and sentence; and

(e) Attorneys' fees for successfully bringing the wrongful conviction claim calculated at ten percent of the monetary damages awarded under subsection (5)(a) and (b) of this section, plus expenses. However, attorneys' fees and expenses may not exceed seventy-five thousand dollars. These fees may not be deducted from the compensation award due to the claimant and counsel is not entitled to receive additional fees from the client related to the claim. The court may not award any attorneys' fees to the claimant if the claimant fails to prove he or she was wrongly convicted.

(6) The compensation award may not include any punitive damages.

(7) The court may not offset the compensation award by any expenses incurred by the state, the county, or any political subdivision of the state including, but not limited to, expenses incurred to secure the claimant's custody, or to feed, clothe, or provide medical services for the claimant. The court may not offset against the compensation award the value of any services or reduction in fees for services to be provided to the claimant as part of the award under this section.

(8) The compensation award is not income for tax purposes, except attorneys' fees awarded under subsection (5)(e) of this section.

(9)(a) Upon finding that the claimant was wrongly convicted, the court must seal the claimant's record of conviction.

(b) Upon request of the claimant, the court may order the claimant's record of conviction vacated if the record has not already been vacated, expunged, or destroyed under court rules. The requirements for vacating records under RCW 9.94A.640 do not apply.

(10) Upon request of the claimant, the court must refer the claimant to the department of corrections or the department of social and health services for access to reentry services, if available, including but not limited to counseling on the ability to enter into a structured settlement agreement and where to obtain free or low-cost legal and financial advice if the claimant is not already represented, the community-based transition programs and long-term support programs for education, mentoring, life skills training, assessment, job skills development, mental health and substance abuse treatment.

(11) The claimant or the attorney general may initiate and agree to a claim with a structured settlement for the compensation awarded under subsection (5) of this section. During negotiation of the structured settlement agreement, the claimant must be given adequate time to consult with the legal and financial advisor of his or her choice. Any structured settlement agreement binds the parties with regard to all compensation awarded. A structured settlement agreement entered into under this section must be in writing and signed by the parties or their representatives and must clearly state that the parties understand and agree to the terms of the agreement.

(12) Before approving any structured settlement agreement, the court must ensure that the claimant has an adequate understanding of the agreement. The court may approve the agreement only if the judge finds that the agreement is in the best interest of the claimant and actuarially equivalent to the lump sum compensation award under subsection (5) of this section before taxation. When determining whether the agreement is in the best interest of the claimant, the court must consider the following factors:

(a) The age and life expectancy of the claimant;

(b) The marital or domestic partnership status of the claimant; and

(c) The number and age of the claimant's dependants.

[2013 c 175 § 6.]

4.100.070
Provision of information — Statute of limitations.

(1) On or after July 28, 2013, when a court grants judicial relief, such as reversal and vacation of a person's conviction, consistent with the criteria established in RCW 4.100.040, the court must provide to the claimant a copy of RCW 4.100.020 through 4.100.090, 28B.15.395, and 72.09.750 at the time the relief is granted.

(2) The clemency and pardons board or the indeterminate sentence review board, whichever is applicable, upon issuance of a pardon by the governor on grounds consistent with innocence on or after July 28, 2013, must provide a copy of RCW 4.100.020 through 4.100.090, 28B.15.395, and 72.09.750 to the individual pardoned.

(3) If an individual entitled to receive the information required under this section shows that he or she was not provided with the information, he or she has an additional twelve months, beyond the statute of limitations under RCW 4.100.090, to bring a claim under this chapter.

[2013 c 175 § 7.]

4.100.080
Remedies and compensation exclusive — Admissibility of agreements.

(1) It is the intent of the legislature that the remedies and compensation provided under this chapter shall be exclusive to all other remedies at law and in equity against the state or any political subdivision of the state. As a requirement to making a request for relief under this chapter, the claimant waives any and all other remedies, causes of action, and other forms of relief or compensation against the state, any political subdivision of the state, and their officers, employees, agents, and volunteers related to the claimant's wrongful conviction and imprisonment. This waiver shall also include all state, common law, and federal claims for relief, including claims pursuant to 42 U.S.C. Sec. 1983. A wrongfully convicted person who elects not to pursue a claim for compensation pursuant to this chapter shall not be precluded from seeking relief through any other existing remedy. The claimant must execute a legal release prior to the payment of any compensation under this chapter. If the release is held invalid for any reason and the claimant is awarded compensation under this chapter and receives a tort award related to his or her wrongful conviction and incarceration, the claimant must reimburse the state for the lesser of:

(a) The amount of the compensation award, excluding the portion awarded pursuant to RCW 4.100.060(5) (c) through (e); or

(b) The amount received by the claimant under the tort award.

(2) A release dismissal agreement, plea agreement, or any similar agreement whereby a prosecutor's office or an agent acting on its behalf agrees to take or refrain from certain action if the accused individual agrees to forgo legal action against the county, the state of Washington, or any political subdivision, is admissible and should be evaluated in light of all the evidence. However, any such agreement is not dispositive of the question of whether the claimant was wrongly convicted or entitled to compensation under this chapter.

[2013 c 175 § 8.]

4.100.090
Actions for compensation.

Except as provided in RCW 4.100.070, an action for compensation under this chapter must be commenced within three years after the grant of a pardon, the grant of judicial relief and satisfaction of other conditions described in RCW 4.100.020, or release from custody, whichever is later. However, any action by the state challenging or appealing the grant of judicial relief or release from custody tolls the three-year period. Any persons meeting the criteria set forth in RCW 4.100.020 who was wrongly convicted before July 28, 2013, may commence an action under this chapter within three years after July 28, 2013.

[2013 c 175 § 9.]

APPENDIX B

180 Wash.App. 1037

NOTE: UNPUBLISHED OPINION, SEE WA R GEN GR 14.1

Court of Appeals of Washington, Division 3.

STATE of Washington, Respondent,
v.
Isaiah NEWTON, Jr., Appellant.

No. 32154–1–III. | April 22, 2014.

Appeal from Pierce County Superior Court; Honorable Vicki Hogan, J.

Attorneys and Law Firms

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Thomas Charles Roberts, Pierce County Prosecuting Attorney, Tacoma, WA, for Respondent.

UNPUBLISHED OPINION

BROWN, J.

***1** Isaiah William Newton Jr. appeals his convictions for first degree burglary and resisting arrest. But his briefing does not mention his resisting arrest conviction, except one sentence suggesting cumulative error based on prosecutorial misconduct infected the entire trial. At the outset, we disagree with his suggestion and affirm his resisting arrest conviction. However, he persuasively contends insufficient evidence supports the burglary element of intent to commit a crime, an error underscoring his interrelated concerns over the trial court's decision to give the pattern inference of intent jury instruction. Because his evidence sufficiency challenge is dispositive, we do not reach his other error claims or pro se statement of additional grounds for review. Therefore, we reverse his burglary conviction and remand to dismiss that charge.

FACTS

The State charged Mr. Newton with first degree burglary and resisting arrest. Generally, while in a hallucinogenic state and believing God had instructed him his mother could walk, Mr. Newton, with later disputed permission, climbed through a bedroom window of his disabled mother, Volinda Williams. Ms. Williams fell when he tried to get her to walk. Mr. Newton resisted Tacoma police who responded to the scene. Both Ms. Williams, who rents her bedroom from Kathie Cooper, and Ms. Cooper gave exculpating trial testimony that contradicted their initial reports to police. Mr. Newton visited Ms. Williams in her bedroom up to four times a day, helping her in and out of her bed and wheelchair, assisting her in getting dressed, and bringing her food. Ms. Williams cannot walk unassisted and has been confined to a wheelchair about 20 years.

Specifically, beginning at 12:51 a.m. on May 18, 2012, Mr. Newton called Ms. Williams three times. In the first and second phone calls, he said he wanted to visit her and she told him not to come over until morning. In the third phone call, "[h]e was talking crazy," saying he wanted to share with her that he spoke with God, who told him she could walk. Report of Proceedings (RP) at 62, He told her he was under the influence of a controlled substance that the State later argued was the hallucinogen phencyclidine, commonly known as PCP. She again told him not to come over until morning. Soon, Mr. Newton began pounding on the front door and ringing the doorbell to Ms. Cooper's duplex unit while yelling "mama!" RP at 63. He then went to Ms. Williams' bedroom window, which was closed but not completely secure. He said in a "drunken" voice that "[h]e wanted [her] to open the window because ... God and he had been talking and ... [she] could walk again." RP at 64. She noticed his face was "[n]ot normal, ... not right." RP at 103. She initially refused to open the window for him.

Ms. Williams' and Ms. Cooper's testimony diverged from the police reports. Ms. Williams related no one refused her son entry at the front door. Likewise, Ms. Cooper related she did not do so. Police contradicted these assertions, testifying she told them otherwise upon interview. More importantly, Ms. Williams said she refused to open the window for her son solely because she was in bed and could not reach it. The State asked Ms. Williams on direct examination, "So did [Mr. Newton] open the window?" RP at 66. She answered, "I let him know to open the window if he wanted to come in because I couldn't get out of bed to do that." RP at 66.

She later reiterated how she told him "he could come in through my bedroom window ... [i]f he could open it," RP at 84, "he could open the window [and] ... come in my room." RP at 99. On cross-examination, she elaborated, "I had more or less invited him in to stop him from being out there, and being loud and bothering people, waking people. It was early in the morning." RP at 100. Thus, she claimed she consented to appease him. Ms. Williams claimed she initially told this to police, but their testimony contradicted her assertion.

*2 According to Ms. Williams, once inside the window, Mr. Newton told her she could walk. She asked him to help her to the restroom by following normal procedures. But "[h]e was convinced that [she] could walk." RP at 69. Insistent and all the while repeating God said she could walk, Mr. Newton placed his arms around Ms. Williams and tried lifting her to her feet so she could walk. After a few attempts, they both fell to the ground. The incident accidentally tore her nightgown, shattered her drinking glass, and knocked over her television and some trinkets. Ms. Williams yelled for help. Mr. Newton repeatedly tried lifting her but was unsuccessful because she is a self-described "big woman" or "big lady." RP at 72, 88, 104. Agitated and wanting to get his attention, she claims she hit and kicked him while telling him to stop and get help. He did not listen. Eventually, Mr. Newton helped Ms. Williams to a feeble standing position, clinging to the doorframe. Afraid of falling again, Ms. Williams asked her son to help her maneuver into her wheelchair. He did not comply with her request, instead standing still and insisting, "Mama, you can walk, God told me you can walk." RP at 76.

Ms. Cooper responded to the screaming and saw Ms. Williams clinging to the wall. She returned to her bedroom and called 911 emergency response, staying there during the entire phone call because she was afraid of Mr. Newton's unstable behavior. Neighbor David Price saw Mr. Newton run to the front door and bang and kick it while hollering for Ms. Williams to open it. Mr. Price soon heard a crash and Ms. Williams screaming to Mr. Newton, "Stop, let me go." RP at 393. At the window, Mr. Price saw Mr. Newton "wrestling" with Ms. Williams, "trying to make her stand on her feet." RP at 395. Because of her disability, his efforts had the result of "picking her up and dropping her, picking her up and dropping her." RP at 395. While doing so, Mr. Newton was telling Ms. Williams to walk, yelling loudly, "By the blood of Jesus you can walk, mama." RP at 395. Mr. Price testified, "he was having some kind of episode, or he wasn't really with it." RP at 396. All the while, Ms. Williams was screaming to Mr. Newton, "Let me go," "Stop. Stop. You're hurting me. You're hurting me." RP at 396, 403. But he kept insisting God had told him she could walk. Neighbor Frank Givens joined Mr. Price at the scene. He saw and heard much the same as Mr. Price, and dialed 911.

Police arrived and twice ordered Mr. Newton to release Ms. Williams but, given his mental state, he did not comply. Officer Robert Hannity deployed an electroshock weapon against him and, after a struggle, soon handcuffed him with the help of officers Travis Waddell and Eric Chell. Throughout this encounter Mr. Newton was screaming, "Mom, mom, you don't need you [sic] wheelchair. You don't need your chair. You don't need it anymore. You don't need your wheelchair, mom." RP at 291.

*3 Ms. Williams was crying and nearly hysterical but was not injured. Officer Hannity reported Mr. Newton "opened that window and unlawfully entered her apartment by climbing in the window." RP at 308. But Officer Hannity admitted he supplied the word "unlawfully ." While Officer Hannity reported Mr. Newton had snatched Ms. Williams out of her wheelchair by her neck, he found no sign of strangling.

Mr. Newton did not testify at trial. At the close of the State's evidence, he moved to dismiss the first degree burglary charge for insufficient evidence. He focused his challenge on the element of intent to commit a crime without contesting the element of entering or remaining unlawfully in a building. Mr. Newton explained neither his belligerence nor the eventual assaultive touching and property damage proves he had formed the required intent to commit a crime at the time he opened and climbed through the window, or when he remained in Ms. Williams' bedroom. The trial court denied his motion without explanation. Then, over his repeated objection, the court gave the pattern inference of intent jury instruction, declaring,

> A person who enters or remains unlawfully in a building may be inferred to have acted with intent to commit a crime against a person or property therein. This inference is not binding upon you and it is for you to determine what weight, if any, such inference is to be given.

Clerk's Papers (CP) at 29; *accord* 11A Washington Practice: Washington Pattern Jury Instructions: Criminal (WPIC) 60.05, at 15 (3d ed.2008); *see also* RCW 9A.52.040.[1] Again, Mr. Newton explained the State did not show his alleged intent to commit a crime flowed

more likely than not from entering or remaining unlawfully in Ms. Williams' bedroom. The court reasoned the inference's permissive nature eliminated his concerns, apparently feeling unbound by *State v. Sandoval,* 123 Wn.App. 1, 94 P.3d 323 (1994), and the judicial opinions it cites.

In closing and rebuttal arguments, the State argued it had proved the element of intent to commit a crime by showing Mr. Newton intentionally assaulted Ms. Williams and caused property damage. Further, the State extensively argued witness credibility without objection. Over pages of the record, the State thematically argued about lies, lying, and liars in a manner we think was improper, but which does not affect the dispositive evidence insufficiency.[2]

The jury found Mr. Newton guilty as charged. He appealed.

ANALYSIS

The dispositive issue is whether sufficient evidence supports Mr. Newton's first degree burglary conviction. He contends the State failed to prove he entered or remained unlawfully in Ms. Williams' bedroom with intent to commit a crime.

The State must prove all essential elements of a charged crime beyond a reasonable doubt, *in re Winship,* 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). And, double jeopardy principles prohibit the State from trying a criminal defendant a second time if it failed to muster sufficient evidence the first time. *Burks v. United States,* 437 U.S. 1, 11, 98 S.Ct. 2141, 57 L.Ed.2d 1 (1978).

***4** Evidence is sufficient to support a guilty finding if " 'after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " *State v. Green,* 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (emphasis omitted) (quoting *Jackson v. Virginia,* 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L Ed.2d 560 (1979)). An evidence sufficiency challenge "admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *State v, Salinas,* 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). We defer to the jury's assessment of conflicting testimony, witness credibility, and evidence weight. *State v. Carver,* 113 Wn.2d 591, 604, 781 P.2d 1308, 789 P.2d 306 (1989).

The essential elements of first degree burglary include "enter[ing] or remain [ing] unlawfully in a building" "with intent to commit a crime against a person or property therein." RCW 9A.52.020(1)(b). A person enters or remains unlawfully in a building "when he or she is not then licensed, invited, or otherwise privileged to so enter or remain." RCW 9A.52.010(5). A person acts with intent to commit a crime "when he or she acts with the objective or purpose to accomplish a result which constitutes a crime." RCW 9A.08.010(1)(a). Generally, inferences are disfavored in criminal law. *State v. Cantu,* 156 Wn.2d 819, 826, 132 P.3d 725 (2006). A jury may, however, infer the defendant's specific criminal intent from his or her conduct if it is not " 'patently equivocal' " and instead " 'plainly indicates such intent as a matter of logical probability.' " *State v. Bergeron,* 105 Wn.2d 1, 20, 711 P.2d 1000 (1985) (quoting *State v. Bergeron,* 38 Wn.App. 416, 419, 685 P.2d 648 (1984), *aff'd,* 105 Wn.2d 1)); *see State v. Lewis,* 69 Wn.2d 120, 124, 417 P.2d 618 (1966).

Mr. Newton argues the State did not prove the element of intent to commit a crime. We agree. While a rational jury could, viewing the evidence in the light most favorable to the State, find he entered or remained unlawfully in Ms. Williams' bedroom beyond a reasonable doubt, no evidence shows his intent was anything other than to show her she could walk. Neither his belligerence nor the eventual assaultive touching and property damage proves he had formed the required intent to commit a crime at the time he opened and climbed through the window, or when he remained in her bedroom. No evidence shows he entered or remained unlawfully in her bedroom with the objective or purpose to accomplish a result constituting a crime. The jury could not infer his specific criminal intent from his conduct because it does not plainly indicate such intent as a matter of logical probability. A rational jury could not, viewing the evidence in the light most favorable to the State, find the element of intent to commit a crime beyond a reasonable doubt. *Cf. State v. Woods,* 63 Wn.App. 588, 591–92, 821 P.2d 1235 (1991). Thus, we conclude insufficient evidence supports Mr. Newton's first degree burglary conviction. Accordingly, we reverse his burglary conviction and remand to dismiss that charge.

***5** Considering our holding, we acknowledge Mr. Newton's interrelated concern regarding the permissive inference instruction to stress the due process risks of giving it. In a burglary prosecution, this instruction allows the jury to infer the defendant's alleged intent to commit a crime from his or her act of entering or remaining unlawfully in a building. *See* WPIC 60.05, at 15; *see also* RCW 9A.52.040. The trial court may, with caution, give this instruction if the State shows the defendant's alleged intent flows more likely than not from his or her act, and

the inference is not the sole evidence of intent. *State v. Brunson,* 128 Wn.2d 98, 107–12, 905 P.2d 346 (1995); WPIC 60.05 note on use & cmt. at 15; *see State v. Drum,* 168 Wn.2d 23, 36, 225 P.3d 237 (2010); *State v. Deal,* 128 Wn.2d 693, 700, 911 P.2d 996 (1996); *State v. Jackson,* 112 Wn.2d 867, 875, 774 P.2d 1211 (1989); *see also County Court v. Allen,* 442 U.S. 140, 165–67, 99 S.Ct. 2213, 60 L.Ed.2d 777 (1979). Where, as here, the inference is the sole evidence of intent, the State must show the defendant's alleged intent flows beyond a reasonable doubt from his or her act. *Brunson,* 128 Wn.2d at 107, 109, 110–11; WPIC 60.05 note on use & cmt. at 15; *see Drum,* 168 Wn.2d at 35–36; *Deal,* 128 Wn.2d at 700 & n. 4; *Jackson,* 112 Wn.2d at 875; *see also Allen,* 442 U.S. at 166–67.

In *Sandoval,* 123 Wn.App. 1, the trial court erred by giving the inference of intent instruction. While intoxicated by alcohol, the defendant kicked open the door of a stranger's residence, apparently mistaking it for his own. *Id.* at 3, 5. The occupant confronted the defendant inside. *Id.* Surprised, the defendant shoved the occupant. *Id.* The *Sandoval* court concluded "there is no fact, alone or in conjunction with others, from which [the defendant's alleged] intent to commit a crime more likely than not could flow." *Id.* at 5. The State did not show his alleged intent to commit a crime flowed more likely than not from his act of entering or remaining unlawfully in a stranger's residence. *Id.*

Mr. Newton's case is somewhat similar to *Sandoval.* While under the influence of PCP, he opened and climbed through the window to Ms. Williams' bedroom without guise. He tried to get her to walk because he believed God had answered his prayers and enabled her to do so. "He was convinced that [she] could walk." RP at 69. He committed the assaultive touching solely in his surprised attempt to show her she could walk. He did not express animus towards her. He did not try to sneak in or flee from her bedroom, was not wearing clothes or carrying tools associated with burglary crimes, and made no effort to take or consciously destroy property. No fact exists, alone or in conjunction with others, from which his alleged intent to commit a crime could flow beyond a reasonable doubt. The State did not show his alleged intent to commit a crime flowed beyond a reasonable doubt from his act of entering or remaining unlawfully in her bedroom. The trial court erred by giving the inference of intent instruction.

***6** Because Mr. Newton's evidence sufficiency challenge is dispositive, we do not address his remaining contentions.

Affirmed in part. Reversed and remanded in part.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

WE CONCUR: SIDDOWAY, C.J., and LAWRENCE–BERREY, J.

All Citations

Not Reported in P.3d, 180 Wash.App. 1037, 2014 WL 1607389

Footnotes

1 Additionally, the trial court gave the pattern voluntary intoxication jury instruction, declaring, "No act committed by a person while in a state of voluntary intoxication is less criminal by reason of that condition. However, evidence of intoxication may be considered in determining whether the defendant acted intentionally or knowingly." CP at 30; *accord* 11 WPIC 18.10, at 282; *see also* RCW 9A.16.090.

2 Our decision to reverse Mr. Newton's burglary conviction and dismiss the burglary charge would limit our prosecutorial misconduct and cumulative error analyses to his resisting arrest conviction. But any errors, considered individually or cumulatively, are not substantially likely to affect the jury's verdict on the resisting arrest charge because they concern his burglary conviction solely and ample evidence supports his resisting arrest conviction. Therefore, we would conclude he received a fair trial.

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NO. 47066-7

WASHINGTON STATE COURT OF APPEALS, DIVISION II

ISAIAH W. NEWTON, JR., Appellant, v. STATE OF WASHINGTON, Respondent.	DECLARATION OF SERVICE

I, Kelly Hadsell, declare as follows:

On this 27th day of July, 2015, I served via electronic mail and United States mail, true and correct cop(ies) of the Brief of Respondent and Declaration of Service, postage affixed, addressed as follows:

Douglas R. Cloud
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 27th day of July, 2015, at Seattle, Washington.

Kelly Hadsell

KELLY HADSELL

WASHINGTON STATE ATTORNEY GENERAL

July 29, 2015 - 10:43 AM

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